



SPA 124 PERMIT DECISION NOTICE

[FWP-CEA-FSH-R5-24-006; MI-04-24 Biel EWP]

05/03/2024

ACTION

Decision Notice (DN). Montana Fish, Wildlife & Parks (FWP) shall prepare a DN for the proposed action. The DN must identify the agency decision, the reasons for the decision, and any special conditions surrounding the decision or its implementation.

With this action, FWP hereby adopts the Draft Environmental Assessment or Draft EA prepared for the proposed action as final, and approves Alternative 2, the proposed action.

AUTHORITY: MONTANA ENVIRONMENTAL POLICY ACT

According to the applicable requirements of the Montana Environmental Policy Act or MEPA and its implementing rules and regulations, before a proposed action may be approved, environmental review must be conducted to identify, consider, and disclose any potential impacts of the proposed action on the affected human environment. The level of environmental review will vary with the complexity and seriousness of environmental issues associated with a proposed action. The level of public interest will also vary. The agency is responsible for adjusting public review to match these factors. *Title 75, Chapter 1, Parts 1 through 3, Montana Code Annotated (MCA)*. Based on these factors, FWP determined a Checklist EA (Draft EA) constitutes the appropriate level of review for the proposed action. Therefore, to assess and disclose potential impacts of the proposed action, FWP prepared a Draft EA.

PUBLIC PARTICIPATION PROCESS

Under usual circumstances, FWP makes the Draft EA available for public review and comment. However, in this circumstance, MEPA's required public process for projects of this nature is impacted by a competing statutory deadline. MEPA requires FWP to comply with its terms "*to the fullest extent possible*." To fulfill the stated policy of MEPA, the agency shall conform to the applicable rules prior to reaching a final decision on proposed actions covered by MEPA. *ARM 12.2.428, Policy Statement Concerning MEPA Rules*. More specifically, § 87-5-504, *MCA*, states:

"Within 30 days after the receipt of such plans [for a project subject to SPA 124 permitting], the department shall notify the applicant whether or not such construction project or hydraulic project will adversely affect any fish or game habitat. If the department notifies the applicant that such construction will adversely affect any fish or game habitat, it shall accompany such notice with recommendations or alternative plans which will eliminate or diminish such adverse effect."

Effectively, within 30 days after receipt of an application [for an SPA 124 Permit], FWP must make a final decision on the proposed action/project. Within the applicable 30-day timeframe, the MEPA practitioner or author of the Draft EA must conduct a rigorous process, making it difficult or impossible for FWP to accommodate a public comment period for the Draft EA within the required 30-day time-period. § 87-5-504, MCA.

Therefore, for the purposes of achieving compliance with MEPA, *"to the fullest extent possible,"* FWP prepares a Draft EA for file, sans public comment, and issues a DN identifying the agency decision, reasons for the decision, and any special conditions surrounding the decision or its implementation. Conditions applicable to the approved action, including recommendations or alternative plans to eliminate or diminish any adverse effects, are contained in the approved SPA 124 Permit (see attached).

DESCRIPTION OF PROPOSED ACTION

The Stillwater Conservation District is sponsoring an Emergency Watershed Protection project that will stabilize 622 linear feet of riverbank using soft armoring techniques while removing (dredging) materials that were deposited during the June 2022 flood event. Additionally, the project will remove supersacks and a berm placed under emergency measures in 2023 that is interfering with floodplain connectivity. The soft armoring bank stabilization component uses erosion control fabric constructed out of coconut fibers, rock and dredged fill material, riprap, and willows. A toe trench is to be dug and the bank sloped back. Rock will be placed in the trench rock with riprap laid up the bank to the elevation of the low water table. Then willows will be installed using 45-degree bundle method and disturbed areas reseeded with native grasses.

PURPOSE AND NEED

The purpose of this project is to stabilize a portion of the riverbank damaged in the June 2022 flood event while removing non-native materials deposited during the flood. The existing bank is eroding and being undercut which will create future bank loss during future ordinary high-water events. The installation of the propose soft armoring will reduce erosion and better stabilize the bank. The removal of nonnative materials (e.g., supersacks, concrete, riprap) and the berm will allow the river to reconnect to its floodplain.

ALTERNATIVES ANALYZED

Alternative 1: No Action

In addition to the proposed action, and as required by MEPA, FWP analyzes the "No-Action" alternative in the EA. Under the No-Action alternative, the proposed action would not occur. Therefore, no additional impacts to the human environment would occur. The No Action alternative forms the baseline from which the potential impacts of the proposed action may be measured.

Under the No Action alternative. A do-nothing alternative could lead to additional flooding and unwanted changes to stream hydraulics as the supersacks and current berm does not allow the river to access its floodplain. For these reasons, the do-nothing alternative was not selected.

Alternative 2: Proposed Action

Under the Proposed Action, the emergency berm will be removed and the gravel material will be placed in the bank in a soft-bank project that should increase vegetation growth.

Alternative 3

One alternative proposed by the applicant was removing approximately 6,000 cubic yards of the gravel bed to improve streamflow capacity. FWP was opposed to this alternative as it would negatively influence fish habitat, fish spawning activities, stream hydraulics, and could further destabilize the adjacent bank. Additionally, the area appears to be a depositional zone. The Montana Stream Permitting guidebook states "channel excavation or dredging is often a temporary solution because channels rapidly refill with sediment."

DECISION

Based on the environmental review provided in the Draft EA, and, to the greatest extent possible, in accordance with all applicable laws, rules, regulations, and policies, FWP determined the proposed action (Alternative 2), will not have significant adverse impacts on the human environment associated with the proposed action and constitutes a reasonable and appropriate strategy to achieve identified objectives. Therefore, preparation of an environmental impact statement or EIS is unnecessary.

FWP hereby adopts the Draft EA as final and approves Alternative 2, the Proposed Action.

Sincerely,



Shannon Blackburn
Region 5 Fisheries Program Manager
Montana Fish, Wildlife & Parks